MADAN LAL & ANOR. v. HO SIEW BEE

[O.C.J. (Mustapha Hussain J.C.) March 11 & 18, April 16, 1982 [Penang – Originating Motion No. 73 of 1981]

Landlord & Tenant – Controlled premises – Partnership firm named as tenants in proceedings before Rent Tribunal – Effect of – Control of Rent Act 1966, ss. 3 & 15 (1).

Partnership – Whether can hold tenancy – Partnership not legal persona.

Jurisdiction – Jurisdictional defects – Court may interfere in spite of privative clause in Control of Rent Act, 1966, s. 15(1).

The landlords/respondents of a controlled premises applied to the Rent Tribunal for the determination of the fair rent under section 3 of the Control of Rent Act, 1966. The landlords had named "Hansray Daulatram" as the tenants in the application. "Hansray Daulatram" was the name of the partnership firm. In rent receipts, the partnership firm's name was written. The partners of the said firm were Madan Lal, Saindass, Estate of, and Ram Parkash.

The Rent Tribunal dismissed the landlord's application on the basis that the firm had been named as the tenants and that the firm was not a legal *persona*. On appeal to the Rent Appeal Board, the appeal was allowed. The partners of the firm applied for certiorari against the decision of the Rent Appeal Board.

Held, allowing the application: (1) certiorari lies for jurisdictional defects in spite of the privative clause in section 15(1) of the Control of Rent Act, 1966.

(2) a partnership firm's name is not a legal *persona*. If it is not a legal *persona*, it cannot hold a tenancy, nor can it be a party to a suit in the courts or before any tribunal;

(3) the Order of the Rent Appeal Board was therefore a nullity and should be removed and quashed.

Cases referred to:–

(1) *Secretary of State* v *Mask & Co.* (1940) L.R. 67 I.A. 222, 236.
(2) *Tehrani & Anor.* v *Rostron* [1972] 1 Q.B. 182, 187 & 188.
(3) *Mak Sik Kwong* v. *Minister of Home Affairs, Malaysia* [1975] 2 M.L.J. 168, 170.
(4) *Chan Siew Kim* v. *Woi Fung Sheng Tim Medical Store & Anor.* [1978] 1 M.L.J. 144, 146.
(5) *S.E.A. Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturing Employees Union & Ors.* [1980] 2 M.L.J. 165.
(6) *Wiseman* v. *Wiseman* [1953] 1 All E.R. 601.
(7) *Alagappa Chettiar* v. *Coliseum Cafe* [1962] M.L.J. 111.
(8) *Mak Sik Kwong* v. *Minister of Home Affairs, Malaysia No. 2* [1975] 2 M.L.J. 175, 177.

ORIGINATING MOTION.

R.K. Sharma for the applicants.

Geh Cheng Lok for the respondents.

Cur. Adv. Vult.

Mustapha Hussain J.C.: The landlords of premises Nos. 59 and 61, Penang Street, Penang (which premises are controlled premises) applied on 5.8.76 to the Rent Tribunal for the State of Penang for the determination of the fair rent under s.13 of the Control of Rent Act. 1966. The landlords (Respondents in this Motion) had named "Hansraj Daulatram" as the tenants in the application.

The name "Hansraj Daulatram" is the name of the partnership firm. In the rent receipts, the partnership firm's name was written. It is common ground that the name "Hansraj Daulatram" is the name of the partnership firm and the partners are:

1. Madan Lal 2. Saindass, estate of, and 3. Ram Parkash.

The Rent Tribunal met and after hearing submissions came to the unanimous decision that as the firm had been named as the tenants and that as a firm is not a legal *persona* and cannot be made a party to the proceedings there, the application was dismissed on 11.4.78.

The landlords then gave notice of appeal on 25.4.78 to the Rent Appeal Board. The Rent Appeal Board met and allowed the landlord's appeal on 28.4.81 and remitted back the application to the Rent Tribunal for hearing and determination of the fair rent.

And it is against this Order of the Rent Appeal Board that this application for an Order of Certiorari is made by the tenants, i.e., the partners.

The law

1. Whether the privative words in s.15 (1) of the Control of Rent Act 1966 ousted the jurisdiction of the court to issue orders of certiorari? The answer is NO – see *Secretary of State* v. *Mask & Co.*,(1) *Tehrani & Anor.* v. *Rostron*,(2) *Mak Sik Kwong* v. *Minister of Home Affairs, Malaysia*,(3) *Chan Siew Kim* v. *Woi Fung Sheng Tim Medical Store & Anor.*,(4) *S.E.A. Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturing Employees Union & Ors.*(5)

   It is clear law that Certiorari lies for jurisdictional defects in spite of the privative clause in s.15(1) of the Control of Rent Act, 1966.

2. *Circumstances in which Courts exercise its power to interfere:* Where there is "manifest defect of jurisdiction" – see *Chan Siew Kim v. Woi Fung Sheng Tim Medical Store & Anor., (supra).*

3. *Does Certiorari lie in this case?*

   If there is an error affecting jurisdiction, then the whole proceedings are a nullity – *Wiseman* v. *Wiseman*(6)

Applying the above law to the present case:

Section 13 of the Control of Rent Act 1966 clearly uses the words "landlord", "tenant" or "any person interested."

In sub-section 1(a) "The Tribunal to hear and determine the fair rent where ... not accepted either by the landlord or tenant."

The issue here is – Whether the name of the partnership firm "Hansraj Daulatram" cited by the Respondents in their application to the Tribunal is or can be the Tenant?

It is clear law that a partnership firm's name is not a legal *persona* – see *Alagappa Chettiar* v. *Coliseum Cafe*(7) If it is not a legal *persona*, it cannot hold a tenancy, nor can it be made a party to a suit in the courts or before any tribunal. Section 13 of the Control of Rent Act 1966 requires that the proper parties be before it. Therefore the Rent Tribunal did not have "the facts which must exist before an authority can exercise jurisdiction" – per Abdoolcader J. in *Mak Sik Kwong v. Minister of Home Affairs, Malaysia* (No. 2)(8)

Hansraj Daulatram not being a legal *persona* is NOT a party to the "proceedings that should be subject and amenable to its (the Tribunal's) jurisdiction" – per Abdoolcader

J. in *Chan Siew Kim v. Woi Fung Sheng Tim Medical Store & Anor. (Supra).*

Therefore the Order of the Rent Appeal Board dated 28.4.81 directing the Rent Tribunal to determine the fair rent and the proceedings consequent thereto are a nullity.

Judgment

The Order of the Rent Appeal Board, State of Penang, dated 28.4.81 in Appeal No. 1/78 and all proceedings consequent thereto be removed into this court and be quashed.

Costs of and incidental to Application to be taxed and paid by the Respondents to the Applicants.

Application allowed.

Solicitors: *Sharma & Co.; Geh Cheng Lok & Co.*

KRISHNA KUMAR v. UNITED MALAYAN BANKING CORPORATION BHD.

[O.C.J. (Gunn Chit Tuan J.) April 21 & 23, 1982]
[Penang – Originating Motion No. 27 of 1982]

Land Law – Caveat – First chargee refused to consent to Bank for creation of second charge – Bank lodged private caveat – Application to remove said private caveat – Whether bank had registrable interest – Intention of the parties – National Land Code, s. 323(1) (a) & (b).

Land Law – Charge – Registrable charge – Intention of the parties to create one.

The applicant in this case gave MBF a first charge on his land on December 27, 1976. But on or about June 1976, three companies of which the applicant was the managing director had obtained loans from the bank, and the said companies later defaulted in their repayments. The applicant and the three companies in consideration of the bank forbearing to sue them for recovery of the said loans agreed to provide additional security in the nature of a second charge on the said lands conditional upon and subject to the consent of MBF, the first chargee. MBF granted conditional consent on October 31, 1977 and the relevant second charge documents were signed by the applicant and sent by the bank's solicitors to MBF for their consent on October 25, 1978. MBF refused to grant consent for the creation of a second charge in favour of the bank for the reason, *inter alia*, that the bank had delayed in sending them the second charge instruments. On May 8, 1979 the bank proceeded to register a private caveat on the said land and on November 12, 1979 the bank sued the 3 companies and the applicant for the outstanding loans in Civil Suit Nos. C720, C721 and C722 of 1979. On February 12, 1982 the bank applied for and obtained an Order that the private caveat be extended until the final disposal of the Civil Suit Nos. C720, C721 and C722 of 1979.

The applicant applied to set aside the said Order and for the removal of the private caveat.

Held, dismissing the application: (1) an instrument of charge in registrable form is an example of a registrable interest within the meaning of section 323(1)(a) of the National Land Code;

(2) the fact that MBF had not endorsed its consent on an annexure to the said charge did not detract from the fact that it was an instrument of charge in registrable form and that even if the relevant authorities had refused to accept it for registration, nevertheless the bank had a registrable interest in the land within the meaning of the said section 323(1)(a);

(3) even if it was considered that the bank had no registrable interest because the relevant charge was not in registrable form without MBF's consent, the bank had a right to such registrable interest. There was at all times an intention on the part of the applicant to create a charge in favour of the banks and he as well as his 3 companies did in fact execute the relevant charge form and a supplementary security agreement;

(4) in the circumstances of the case the applicant's notice of originating motion should be dismissed and the caveat remain extended until disposal of the pending civil suit.

Cases referred to:-

(1) *R & I Securities Sdn. Bhd.* v. *Golden Castle Finance Corporation (M) Bhd.* [1979] 1 M.L.J. 46.
(2) *In the matter of Registration of Caveat Vol VI Folio No. 46* (1908) Innes 114.
(3) *K. Sockalingam Mudaliar* v. *M.R.M. Ramasamy Chettiar & Veerammal* [1938] M.L.J. 237; F.M.S.L.R. 77.
(4) *Intercontinental Mining Co. Sdn. Bhd.* v. *Societe Des Etains De Bayas Tudjuh* [1974] 1 M.L.J. 145.
(5) *Mahadevan & Anor.* v. *Patel* [1975] 2 M.L.J. 207, 208.
(6) *Macon Works & Trading Sdn. Bhd.* v. *Phang Hon Chin* [1976] 2 M.L.J. 177, 182.

ORIGINATING MOTION.

K.S. Narayanan for the applicant.
Dr. Stephen Goh Tyau Hin for the respondents.

Cur. Adv. Vult.

Gunn Chit Tuan J.: On February 12, 1982 the United Malayan Banking Corporation Berhad (the bank) applied *ex parte* for and obtained an order that the private caveat in respect of lands held under pegangan No. 503 and 504 daftar sementara and lot No. 2838 grant No. 1272 respectively held under PB 14 DTL Pulau Pinang and Mukim 18 DTL Pulau Pinang (the said lands) be extended until K.L. High Court Civil Suits No. C720, C721 and C722 of 1979 filed by the bank against the registered proprietor, Krishna Kumar s/o T.N. Sharma (the applicant) had been finally disposed of or until the applicant pay up the amount of security or provide an alternative security. The applicant therefore applied by notice of originating motion in April 1982 for an order to set aside that order and that the Registrar of Titles be directed to remove the said private caveat entered against the said lands.